

File Number: 98-923

Prepared By and Return To:  
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Southaven, Mississippi 38671  
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BOOK 79 PAGE 430

STATE MS.-DE SOTO CO.

FILED

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W.E. DAVIS CH. CLK.

ASSIGNMENT OF LEASES, RENTS AND INCOME  
(Mississippi)

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, the undersigned (hereinafter called "Borrower") is the owner of certain real property ("the Realty") described on Exhibit "A" annexed hereto; and

WHEREAS, Borrower is indebted to First Tennessee Bank National Association Mississippi ("Lender") for sums advanced or to be advanced.

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

That Borrower for good and valuable consideration, the receipt whereof is hereby acknowledged, hereby grants, transfers and assigns to Lender the entire Borrower's interest in and to all leases, rents, issues, profit, income, revenues and other charges, now existing or hereafter arising, and from time to time to be received, together with any guarantees and deposits securing payment thereof, arising from or for the use and occupation of the Realty, including all leases hereafter executed during and for the term of this Assignment for any portion of the Realty, whether by Borrower or subsequent owners (all of which is together hereinafter called the "Lease").

This Assignment is made for the purpose of securing:

A. The payment of that indebtedness, together with interest, evidenced by the following, including any extension or renewals thereof: that certain Promissory Note of even date herewith, in the original principal sum of \$ 750,000.00, together with interest thereon.

B. The payment of that indebtedness, liabilities or obligations owing by Borrower to Lender, whether mature or unmatured, absolute or condition, primary or secondary, and whether now existing or hereafter arising; and

C. The performance and discharge of each and every obligation, covenant and agreement contained herein or in any instrument evidencing or securing the indebtedness secured thereby.

Borrower covenants with Lender to observe and perform all the obligations imposed upon it as Lessor under any Lease and not to do or permit to be done anything to impair the security thereof; not to collect any of the rents, income and profits arising or accruing under any Leases upon the Realty, or any portion thereof, in advance of the time when the same shall become due; not to execute any other Assignment of Lessor's interest in any Lease or assignment of rents arising or accruing from any Lease or cancel or terminate the same or accept a surrender thereof without the prior written consent of Lender; at Lender's request to deliver to the Lender true copies of any and all such leases upon all or any part of the Realty during and for the term of this Assignment, and to execute and deliver at the request of Lender all such further assurances and assignments in the premises as Lender shall from time to time require.

This Assignment is made on the following terms, covenants and conditions:

1. So long as there shall exist no default by Borrower in the payment or performance of the indebtedness and obligations secured hereby, or in any lease on the part of Borrower to be performed, borrower shall have the right to collect at the time of, but not prior to, the date provided for the payment thereof, all rents, income and profits arising from the Realty or any Lease thereof, and to retain, use and enjoy same.

2. Upon or at any time after default in the payment or performance of any indebtedness, obligation or liability secured hereby, Lender without in any way waiving such default may at its option, without notice and without regard to the adequacy of the Collateral, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a Court, (a) take possession of the Realty, or any portion thereof, together with all furniture, fixtures, appliances and other personalty thereon or therein, and have, hold, manage, lease and operate the same, at such times and for such period of time as Lender may deem proper; (b) cancel, amend or alter existing Leases and execute new leases (including leases that extend beyond any redemption period); and (c) with or without taking possession of the Realty in its own name, sue for or otherwise collect and receive all rents, income and profits therefrom, including those past-due and unpaid and to apply such rents, income and profits to the payment of: (i) all expenses of managing the Realty including without limitation the salaries, fees and wages of the managing agent and such other employees as Lender may deem necessary or desirable, and all expenses of operating and maintaining the Realty, (including without limitation all taxes, charges, claims, adjustments, water rents, sewer rents, liens, leases, installment obligations and premiums for insurance which lender may deem necessary and desirable, and the cost of all operations, renovations, repairs or replacements), and all expenses incident to taking and/or receiving possession of the Realty; and (ii) the principal sum, interest and indebtedness secured hereby, together with all costs and attorney fees. The exercise by Lender of the options granted in this paragraph and collection of rents, income and profits and application thereof, hereby provided, shall not be considered a waiver of any default by Borrower under any Note or Deed of Trust or under any Lease or this Assignment, or under any other agreement to which Borrower and Lender may be parties.

3. Lender shall not be liable for any loss sustained by the Borrower resulting from Lender's failure to let the Realty after default or from any other act or omission of lender in managing same after default, unless such loss is caused by the willful misconduct and bad faith of Lender. Nor shall Lender be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under any lease or under or by reason of this Assignment, and Borrower shall, and does hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under any lease or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Lender by reason of the alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any lease. Should Lender incur any such liability under any Lease or under or by reason of this Assignment, or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney fees shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand, and upon demand and failure of Borrower so to do, Lender may, at its option, declare all sums secured hereby immediately due and payable. And it is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Realty upon Lender, nor for the carrying out of any of the terms and conditions of any Lease; nor shall it operate to make Lender responsible or liable for any act or omission by the tenants or any other parties, or for any dangerous or defective condition of the Realty or for any negligence in the management, upkeep, repair or control of said Realty resulting in loss or injury or death of any tenant, licensee, employee or stranger.

4. Upon payment in full of the obligations, indebtedness, and liability secured hereby, this Assignment shall become void and of no effect, but the Affidavit, certificate, letter or statement of any officer, agent or attorney of Lender showing any part of said indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. Borrower hereby authorizes and directs the Lessee named in any Lease, or any other or future Lessee or occupant of the Realty described therein, upon receipt from the Lender of written notice to the effect that Lender is then the holder of said indebtedness and that a default exists thereunder or under the Assignment, or any obligation, indebtedness or liability secured hereby, to pay over to the Lender all rents, income and profits arising or occurring under such Lease or from the Realty described therein, and to continue so to do until otherwise notified by Lender. Upon the curing of any and all defaults in any Note, Deed of Trust and/or any other instruments given to evidence or secure the indebtedness secured hereby, the Borrower may

request that the Lender notify the Lessee named in any Lease or in any other or future leases that all defaults have been cured. Upon receipt of request to issue such a notice, the Lender will notify any such lessee, provided, the indebtedness, obligations and liabilities secured hereby are current in all respects and no defaults of any type or character exist in any of the covenants of the above-mentioned instrument.

5. Lender may take other security for payment of the indebtedness secured hereby and may release any party primarily or secondarily liable therefor, and may apply any other security held by it to the satisfaction of the indebtedness secured hereby without prejudice to any of its rights under this Assignment.

6. The term "Lease" as used herein means any lease executed during and for the term of this Assignment covering the Realty described in the Lease, or any part thereof.

7. Nothing contained in this Assignment, or done or omitted by the Lender pursuant to the powers and rights granted hereunder, shall be deemed to be a waiver by Lender of its rights and remedies under any Note and Deed of Trust, and this Assignment is made and accepted without prejudice to any of the rights or remedies possessed by Lender under the terms of any Note and Deed of Trust, or under any other instrument evidencing or securing any indebtedness secured hereby. The right of the said Lender to collect the indebtedness, together with interest secured hereby, and to enforce any other security held therefor by it, may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of the Lender and any subsequent holder of any Note secured hereby, and shall be binding upon Borrower, its heirs, executors, administrators, successors and assigns and any subsequent owner of the Realty.

8. This Agreement, will be governed by and construed in accordance with the laws of the State of Mississippi.

9. Any release of all or any part of the Property from the lien of the Deed of Trust securing the Promissory Note above described, shall constitute a release of such property from this Agreement.

IN WITNESS WHEREOF, the Borrower has executed this Assignment of Leases, Rents and Income this 9th day of November, 1998.

Donald H. Markle  
DONALD H. MARKLE

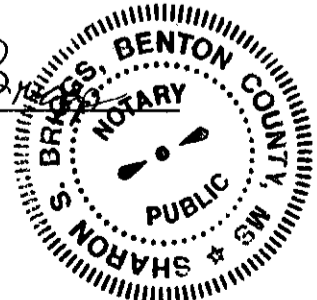
Peggy L. Markle  
PEGGY L. MARKLE

STATE OF MISSISSIPPI  
COUNTY OF DESOTO

PERSONALLY appeared before me, the undersigned authority in and for said County and State, on this 9th day of November, 1998, within my jurisdiction, the within named Donald H. Markle and wife, Peggy L. Markle, who acknowledged that they executed the above and foregoing instrument.

Sharon S. Briggs  
Notary Public

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 16, 2002  
BONDED THRU STEGALL NOTARY SERVICE



INVENTORY: All inventory which I hold for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or material used or consumed in my business known as DONNIE'S DELI, 960 AND 970 GOODMAN ROAD, DESOTO COUNTY, SOUTHAVEN, MISSISSIPPI.

EQUIPMENT: All equipment, including but not limited to, all machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and recordkeeping equipment, and parts and tools. Any equipment described in a list or schedule which I give to you will also be included in the secured property, but such a list is not necessary for a valid security interest in my equipment.

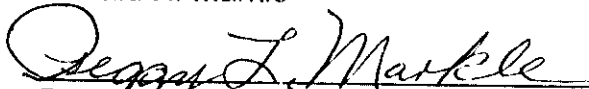
ACCOUNTS, INSTRUMENTS, DOCUMENTS, CHATTEL PAPER AND OTHER RIGHTS TO PAYMENT: All rights I have now or may have in the future to the payment of money including, but not limited to:

- (a) payment for goods sold or leased or for services rendered, whether or not I have earned such payment by performance; and
- (b) rights to payment arising out of all present and future debt instruments, chattel paper and loans and obligations receivable.
- (c) and specifically that certain assignment dated September 25, 1997, of the Variable Annuity Contract number 01 9260696 in the name of Donald H. Markle and
- (d) all rights of payment of Promissory Note dated September 19, 1997 between Donald E. Sellers and Donald H. Markle in the amount of \$384,500.00 by Assignment dated September 25, 1997.

The above include any rights and interests (including all liens and security interests) which I may have by law or agreement against any account debtor or obligor of mine.

GENERAL INTANGIBLES: All general intangibles including, but not limited to, tax refunds, applications for patents, copyrights, trademarks, trade secrets, good will, trade names, customer lists, permits and franchises, and the right to use my name.

  
Donald H. Markle

  
Peggy L. Markle